

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
TOWN OF NEW HARTFORD MUNICIPAL BUILDING
JULY 20, 2020**

The Regular Meeting was called to order at approximately 6:00 P.M. by Chairman Randy Bogar. Board Members present were John Montrose, Michele Mandia, Byron Elias, Karen Stanislaus, Lenora Murad and Fred Kiehm. Also in attendance were Councilman Richard Lenart; Town Attorney Herbert Cully, Assessor Darlene Abbatecola, and Secretary Dory Shaw. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members and explained the procedures for tonight's meeting.

He also stated that the application for Mr. Brian Stanistreet on 6 Shepard Avenue was postponed until the August 17, 2020 meeting.

The application of **Ms. Kimberly Cordeiro, 1 Harrogate Road, New Hartford, New York**. The applicant is proposing a 280± square foot addition on the side of her home. This area is zoned High Density Residential, which requires that the side yard setback be 10'. The proposed addition will extend into the required side yard setback by 7'±, therefore, the applicant is seeking a 7'± side yard setback Area Variance. Tax Map #339.011-3-4; Lot Size: 180' x 142'; Zoning: HDR (High Density Residential). Ms. Cordeiro appeared before the Board.

Due to the State mandated restrictions, all attendees will be required to wear face masks continuously covering nose and mouth, and six (6) foot "social distancing" will be observed. Applicants and attendees must strictly adhere to the above and to the stated hearing time. The Town of New Hartford further reserves the right to limit the number of participants in each hearing.

Ms. Cordeiro explained that she is limited to space in the rear yard. She would like to add a four season room with a deck off of that room. There is a patio there now that extends out. Board Member Kiehm asked how much further is the addition going beyond the covered patio. The patio is about 12' but they would go out to 14'. She spoke to some of the neighbors and they don't have a problem with this. They requested a variance for an addition previously but it didn't take place (see file). The roof will be redone and tiles will match the house. Siding on the four season room will match the house also as best as they can. They will be not be using the existing foundation – new foundation. She would like the additional living space.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at approximately 6:14 P.M.

At this time, the Board Members reviewed the criteria for an Area Variance:

- An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance – response; no, all in agreement;

- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response; no, all in agreement;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response; no, all in agreement;
- The requested variance is substantial – response: no, all in agreement;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: no, all in agreement;
- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: possibly, all in agreement.

Motion was made by Board Member Fred Kiehm to grant this application as requested/submitted; seconded by Board Member Lenora Murad; and that a Building Permit it be obtained within one year of approval date. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose – yes
Board Member Byron Elias – yes
Board Member Karen Stanislaus - yes

Board Member Fred Kiehm - yes
Board Member Michele Mandia - yes
Board Member Lenora Murad – yes

Motion was **approved** by a vote of 7 – 0.

CORRESPONDENCE:

-Mr. Raymond Johnson, 300 Fairway Drive, New Hartford, New York. Mr. Johnson would like to clarify his previous request for a fence with additional information. Tax Map #317.011-3-21; Lot Size: 164’ x 75’; Zoning: Low Density Residential. Mr. Johnson appeared before the Board with his attorney, Mark Wolber. (Another Legal Notice was published and residents were renotified).

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Town Attorney Cully presented what had happened last month with this application. The Board did not grant the application to Mr. Johnson. He received a letter from Mr. Johnson’s attorney, Mark Wolber, requesting a presentation of further information to the Board regarding this matter, i.e. shrub and stain. He would provide more detail on the plans – it is not a reapplication. Town Attorney Cully felt this leaves the Board with three possibilities 1) the applicant can reapply as long as he makes substantial changes – new application and different; 2) take an Article 78 proceeding in Court and ask a Judge to make a determination; and 3) the possibility if this Board decides to open it up for a brief consideration – this is up to the Board. Town Attorney Cully said way the law works from the cases he has worked on, you can vote to reconsider the matter but we have to find there are changed circumstances or new facts.

If some important factor was left out, this would give us a basis to reconsider. However, they want to address the change for the newly discovered facts and it is up to this Board to decide.

Board Member Kiehm addressed the Board stating he does not feel this application has any standing on this matter tonight. We all commented and voted on this and he feels it is over with. Mr. Johnson didn't reapply for another variance.

Chairman Bogar referred to the other Board Members and how they felt. Chairman Bogar, Board Members Murad, Montrose and Kiehm did not want to proceed. Board Member Murad explained how reopening this without another/changed variance could lead to others requesting the same. Discussion ensued on this comment. Board Members Stanislaus, Mandia and Elias discussed possibly giving the applicant a few minutes to discuss this.

Board Member Kiehm motioned to deny reconsideration to present this new evidence to the Board this evening; seconded by Board Member John Montrose. Discussion ensued.

Town Attorney Cully further addressed time limits for this application, i.e., Article 78. This is a correspondence item and not a reapplication. If we were to reconsider it this evening, we have to take a vote all over again, i.e., if they presented information that was new and it was in the previous application but didn't discuss it, you would then take a vote as to whether or not to reopen and reconsider. We do not have to take action on a correspondence item.

Board Member Kiehm withdrew his motion and Board Member Montrose also withdrew his second.

Chairman Bogar asked the Board Members if they wanted to readdress this correspondence tonight:

Chairman Bogar – no	Board Member Kiehm – no
Board Member Murad – no	Board Member Mandia – yes
Board Member Montrose – no	Board Member Elias – yes
Board Member Stanislaus – yes	

The vote is 4 – 3 NOT to listen to the applicant's request. The applicant has the chance to reapply with a different submittal if desired.

Minutes of the June 29, 2020 meeting were approved by Board Member Byron Elias; seconded by Chairman Randy Bogar. All in favor.

There being no further business, the meeting adjourned at approximately 6:45 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals/dbs